

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
HARRIS, : Docket #15cv8456
 : 1:15-cv-08456-CM-RLE
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Plaintiff, :
 :
- against - :
 :
THE CITY OF NEW YORK, et al., :
 : New York, New York
Defendants. : July 13, 2017

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PROCEEDINGS BEFORE
THE HONORABLE RONALD L. ELLIS
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE COURT: We're in the matter for a status conference, Jonathan Harris versus the City of New York and parties, 15cv8456. Attorneys, please state your name for the record.

MR. GABRIEL HARVIS: Gabriel Harvis for the plaintiff, good morning, Your Honor.

THE COURT: Good morning.

MR. PAUL JOHNSON: Paul Johnson for the defendants.

THE COURT: Good morning.

MR. JOHNSON: Good morning.

THE COURT: Okay. Well, this was referred by Judge McMahon, I guess she characterizes it as a discovery dispute, although it seemed pretty clear to me that she made herself pretty clear as to what she wanted to happen. So I'm not sure it qualifies as a dispute, it has to do with the depositions of the officers, what's the story?

MR. HARVIS: Well, Your Honor, I mean it's a little bit, there's a little more to it than that. Judge McMahon did indicate that the Court wanted the depositions held by the deadline and the defendants have provided dates and we have depositions beginning tomorrow. The problem is that they've all been scheduled to take place by the deadline. So in the next two weeks we have five depositions

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2 scheduled.

3 The problem is that we're now being called upon to
4 begin the depositions tomorrow without certain documents and
5 discovery that we believe we're entitled to, and so that's
6 really the concern now is that --

7 THE COURT: Are they objected to?

8 MR. HARVIS: Well, some of them were. I mean we
9 listed them in our June 20th letter to the Court at page 2,
10 and so I mean some of them I would argue aren't even subject
11 to objection, like a privilege log, for example.

12 THE COURT: So when are the depositions starting
13 and who's supposed to be deposed?

14 MR. HARVIS: So tomorrow we have Detective Taylor,
15 who is one of the defendants, and then they'll proceed on
16 the 18th, 21st, 26th and 27th.

17 THE COURT: Okay. And is there something that you
18 absolutely need for Detective Taylor?

19 MR. HARVIS: Sure. Well, what we had hoped for
20 was there, I mean there are a number of things here that
21 relate to Detective Taylor. First of all, his photograph is
22 something that I had hoped to have in advance of his
23 deposition so I could show it to the plaintiff and get a
24 sense from him as to who Detective Taylor is in these
25 events, so that I could craft my examination around

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2 plaintiff's allegations as to that detective. I was also --

3 THE COURT: What's the problem with the
4 photograph?

5 MR. JOHNSON: Your Honor, we didn't want the
6 photograph circulating in federal prison. We consent that
7 he -- we also consent that he was at the scene and that he
8 was the arresting officer. So we don't understand why --

9 THE COURT: I am sorry, what's that objection?

10 MR. JOHNSON: The objection was, first off, we
11 didn't want the photograph circulating in a federal prison.

12 THE COURT: I know, I understand what you don't
13 want, that's like somebody saying I object because it might
14 hurt me --

15 MR. JOHNSON: No, we objected because we thought
16 it was irrelevant and unnecessary because we said that he
17 was at the scene and that he was the arresting officer, the
18 paperwork tells him what the arresting officer is, his
19 mobile tells you he was there, and that was our objection to
20 it.

21 THE COURT: And what would be the problem with, is
22 this like an undercover cop?

23 MR. JOHNSON: No, Your Honor, but it is, excuse
24 me, we weren't, there was no question about the defendant's
25 identity, so that's why we were questioning why he needed

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the photograph, it's not that it could have hurt him, it's just we didn't see the need for it --

THE COURT: Well let me ask plaintiff's counsel, how did you propose to use this photograph specifically, what would you propose to do?

MR. HARVIS: Sure, Your Honor. So, I mean, this is probably, I would say, like the eighth time that we've dealt with this issue, my office. And so what we would normally do is the photograph would be introduced subject to confidentiality, I would sit down with the plaintiff and say, show the officer's photographs and say which one is this person, where in the allegations does this person fit in? And that way I would know when I'm questioning the officer what particular allegations of the plaintiff I should be raising with that officer.

THE COURT: Okay, so how does this constitute circulating in a prison?

MR. JOHNSON: Well, Your Honor, plaintiff's already been deposed and asked what Brian Taylor's role in this incident was, so we didn't --

THE COURT: So now you're saying it's moot?

MR. JOHNSON: It's moot, yes.

MR. HARVIS: We didn't have the benefit of the photograph, Your Honor, he doesn't know who Brian Taylor is,

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2 it's just a name. So --

3 MR. JOHNSON: We asked him to describe who he was
4 talking about. We asked him specifically about it and --

5 THE COURT: And you stipulated that was Taylor?

6 MR. JOHNSON: Yes.

7 THE COURT: Okay, so what's the issue -- well,
8 then obviously, with respect to Taylor's participation,
9 you're saying you don't know what it is now, you're not
10 sure, you want to get something --

11 MR. HARVIS: So, Your Honor, so at the deposition,
12 Mr. Harris described the officers.

13 THE COURT: Right.

14 MR. HARVIS: So we have descriptions of people,
15 but we have no way of matching those descriptions to
16 individuals. I have no idea what Brian Taylor looks like.
17 So when I get to the deposition tomorrow, I guess I could
18 bring the plaintiff's deposition and try and figure out
19 which of the descriptions he most appears like. But the fact
20 of the matter is, Rule 34 contemplates a production of
21 photographs, the material is relevant and non-privileged,
22 and, you know, we have a whole line of cases in this
23 district and the Eastern District that support the
24 production under these circumstances. So our position would
25 be that the burden is on the defendants to seek a protective

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order if they think they have good cause to avoid production of material.

THE COURT: Well he seems to have a point there, counsel.

MR. JOHNSON: Yeah, Your Honor, I don't see how that's necessary for this deposition. Those cases that he refers to is where the officers are "John Doe" officers, and here there is no question about who he is and what he sees and he can match the description.

THE COURT: Well, okay, I guess I'm compelled to ask the question again, what is your objection?

MR. JOHNSON: We just think it's unnecessary --

THE COURT: You're saying it's not relevant.

MR. JOHNSON: Not relevant, yes. I'm not going to produce, it's not going to lead to the production of any evidence.

THE COURT: You don't think it would aid the lawyer in trying to determine what role Officer Taylor played?

MR. JOHNSON: Well, I think he can Detective Taylor what role he played in the --

THE COURT: And rely on Detective Taylor?

MR. JOHNSON: If it turns out that he is wrong then he can impeach him at trial, yes.

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2 THE COURT: It would be harder to impeach him if
3 he's not prepared. On balance I don't see why you can't
4 just give him the photograph. I mean I understand, look, I
5 don't want stuff about officers or anybody else circulating
6 in the prison, but here I have a lawyer who wants to show, I
7 mean, that would include a document. I mean you can make the
8 same argument about some document and the lawyer says, look,
9 I'm going to show my client and my client is going to tell
10 me where this fits in, you know. It seems to me to be
11 relevant in terms of aiding counsel in getting the narrative
12 from his client and as far as I can tell, the lawyer says
13 he's going to have it in his possession, I have no reason to
14 doubt that a lawyer is going to do that. I mean I don't
15 think, I mean I had visions of him sending the picture to
16 the person in prison and saying what can you tell me about
17 this guy. But under the circumstances it seems to me the
18 use that has been described is relevant and limited in scope
19 such that I don't see a basis for the objection. Do you
20 have the photograph with you now?

21 MR. JOHNSON: I have one at the office.

22 THE COURT: Okay, you two will arrange to get it?

23 MR. HARVIS: Yes, Your Honor.

24 THE COURT: Okay, what's your next problem?

25 MR. HARVIS: Your Honor, there's when an arrest

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2 report is prepared, usually there is first prepared a
3 handwritten copy of the report.

4 MR. JOHNSON: To save Mr. Harvis time, there is no
5 arrest report in this matter.

6 THE COURT: Wait a minute, okay --

7 MR. JOHNSON: If --

8 THE COURT: No, no, no, no, wait, just to be
9 clear, I just want it, this is one of those things that I
10 have as a pet peeve, there should never be a situation where
11 one lawyer raises something and the other side says, no,
12 that's not a problem. You've had, I mean this was referred
13 to me by Judge McMahon, it's been maybe twenty days. If
14 there's an issue that you're raising now that he's going to
15 conceded and save time, you should have saved time before
16 you got here. Now who, I'm not going to raise blame, but if
17 there is another thing that comes up where you say, okay,
18 here's another problem that I have, and he says I'll save
19 you some time or that's not a problem, or we're going to do
20 it, I'm not going to be very happy.

21 Now I don't know where the breakdown is, or if
22 there is no communication, but if you want to take a few
23 minutes and let me leave the bench, go over what it is that
24 you have as a problem, I suggest that because I do not want
25 to have a situation where plaintiff's counsel says here's my

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issue, and defense counsel says, oh, that's not a problem.
Would you like to have a few moments?

MR. HARVIS: I don't need any time, Your Honor,
but if --

THE COURT: Everything else is still in
controversy?

MR. HARVIS: As far as I know.

THE COURT: Okay.

MR. HARVIS: Yeah, I mean if I could just respond
to that. I mean, so, you know, when responding to discovery
demands, if a document doesn't exist, we would just ask that
the opposing parties so state so that we don't have to go to
the Court like here and try to make a whole motion and then
find out that there's a representation that the document
doesn't exist.

THE COURT: Well that's a subset of what I just
said.

MR. HARVIS: Yep.

THE COURT: Okay. Again, just to be clear, I have
defendant's representation that that's not going to happen
again in this conference.

MR. JOHNSON: Well I would like to discuss with
Mr. Harvis if he wants to, I don't know what else he's going
to bring up.

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2 THE COURT: I mean there are no -- counsel,
3 counsel. Counsel, we don't have conversations --

4 MR. HARVIS: I apologize, Your Honor.

5 THE COURT: Not unless I leave the bench. Do you
6 want me to leave the bench?

7 MR. HARVIS: I do not.

8 THE COURT: Okay. all right, but let me give
9 defense counsel an opportunity to, what plaintiff's counsel
10 just said I agree with. That is I don't think there should
11 be arguments over things that do not exist. And, you know,
12 for example, I don't want somebody to say, okay, that would
13 be attorney/client privilege and then find out there's no
14 document, that's kind of ridiculous, okay? So let's try not
15 to have that happen.

16 MR. JOHNSON: I guess just one other thing. He did
17 mention a privilege log, we're not withholding anything for
18 privilege, we've mentioned that in our discovery responses.

19 THE COURT: No, no, I'm just saying as an example.
20 To be completely frank with you, I've had someone from your
21 office say that to me, that they raised the privilege
22 argument then later on they said there were no privileged
23 documents. I said well that doesn't make any sense.

24 Now, what other problems do you have, counsel?

25 MR. HARVIS: Well, Your Honor, I mean I think that

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2 actually leads to another problem because, as Your Honor
3 kind of indicated, I mean we have the specter of privilege
4 raised throughout these responses. I would say the majority
5 of defendant's responses to the discovery demands mention
6 that a certain privilege or another are implicated. So it's
7 hard for me to understand how to reconcile that with the
8 notion that a privilege log or a redaction log is not
9 appropriate in this case.

10 MR. JOHNSON: Because we don't have any documents
11 that we're withholding.

12 THE COURT: There are no documents, okay.

13 MR. JOHNSON: Yes.

14 THE COURT: Okay. This list that's on page 2,
15 you're saying whenever you raise the specter privilege,
16 there are, in fact, no documents that are responsive to
17 these requests.

18 MR. JOHNSON: Right.

19 THE COURT: Okay, counsel, your turn.

20 MR. HARVIS: Okay, I mean I would just note --

21 THE COURT: You can go through them each anyway to
22 be sure.

23 MR. HARVIS: I will, but I just wanted to mention,
24 I mean I think that we're entitled to know what the
25 redactions are, as well as the documents --

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THE COURT: Well he said there were no documents.
I assume that that means no documents, not redactions.

MR. JOHNSON: Right.

MR. HARVIS: Okay, well, just what I meant was for
those documents that were produced with redactions, we just
wanted to have a sense of what the redactions were that were
made to the documents. So that's why --

THE COURT: Oh, you mean you've gotten some
documents, but they were redacted?

MR. HARVIS: Some were, yes.

MR. JOHNSON: Your Honor, I think I said in my
disclosures to them that the names of nonparty police
officers were redacted, birthdates, social security numbers.

THE COURT: That's the only thing?

MR. JOHNSON: Well, and according to their, when
you saw their log of disciplinary history, we redacted non-
relevant events like excessive force if there is no
excessive force in that matter.

THE COURT: I mean did you know this?

MR. HARVIS: Well, I mean we could probably piece
together some of what he's saying from looking at the
responses, but normally my practice would be if you are
going to make a redaction and it's going to be based on
privileged, the Rule 26(B)(5) requires that you set out a

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table so that we can challenge the individual redactions if we think it's appropriate.

MR. JOHNSON: That's not redacting for privilege, that's redacting for relevance. These are irrelevant to the claims at issue in the matter.

THE COURT: Well, if you do any redactions, the other side should know why you're redacting.

MR. JOHNSON: No, and I thought I made clear that we redacted nonparty police officers, birthdates, social security numbers and causes of claims in the disciplinary file that are irrelevant to the claim.

THE COURT: Okay, well, again, let me be clear to you because I don't know how long Judge McMahon will have me supervising these disputes. It needs to be clear what you disagree on, and it shouldn't be I thought I made it clear, it should be it's clear. I don't mind the parties disagreeing, that's where my job comes in, but I mean otherwise you get cases, you have to understand what this looks like from this side of the bench. We have Judge McMahon, she's involved, there's apparent dispute. She gets another judicial officer involved for this apparent dispute. If there is no real dispute, if all it means is communications, you've saved the time of two judicial officers and three weeks.

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2 So if, in going forward, there is any question
3 about whether or not you have a meeting of the minds, you
4 need to make it explicit, because it's not my job to get you
5 to understand each other, it's my job to rule on your
6 disputes.

7 What else do you have? I mean, okay, so if there
8 are any, it seems that plaintiff's counsel isn't sure why
9 you did some of the redactions. Okay, and what's going to
10 happen before, I mean I have other matters that I'm going to
11 take up, but before you leave this courthouse, I invite you
12 to go to my jury room or one of the conference rooms and
13 make sure that you have a meeting of the minds, that way you
14 can come back because I don't want to have to tell Judge
15 McMahon that we have to issue an order for you to do
16 something in the next 24 hours because she says well we have
17 a deadline and you've got to meet the deadline. Because
18 that's what is going to happen for me. I'm not going to
19 change the deadline, I'm going to order you to do things on
20 an expedited basis.

21 What else is an apparent dispute, counsel?

22 MR. HARVIS: Yes, Your Honor. So of the, I don't
23 know if Your Honor is looking at our --

24 THE COURT: I'm looking at.

25 MR. HARVIS: Number 10 lists a number of files,

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2 disciplinary files. Not all of them relate specifically to
3 detective Taylor, but a number of them do. Of the files
4 that are listed there, I've only received one of them as of
5 today, and, you know, without those files, again, it's
6 difficult for me to conduct a fair deposition of the
7 officer. These are what the City has represented are
8 relevant disciplinary records and so we're at a loss to
9 understand why, I guess it's a couple of dozen of these have
10 not been produced.

11 MR. JOHNSON: Your Honor, we sent about a dozen or
12 so disciplinary files to his office about two weeks ago.

13 THE COURT: Did you get them?

14 MR. HARVIS: I've gotten every production he's
15 sent, but we haven't gotten a single disciplinary file,
16 except for the one that I mentioned. What we got yesterday
17 evening were a few single page sheets related to, well, it's
18 unclear exactly what they relate to, they're certainly not
19 files, they're just -- and in some of the cases you can't
20 even tell even the most basic details of the event.

21 For example, I'm looking at one here and it says
22 the entire allegation is listed as improper search. That's
23 the level of detail that I'm given from this single page
24 document.

25 THE COURT: Sounds more like a summary than a

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2 file, counsel.

3 MR. JOHNSON: I will check our files, but I --

4 THE COURT: Your understanding is you sent him the
5 files?

6 MR. JOHNSON: Yeah, I sent him files. Some of them
7 these guys are witnesses to, and they're not the targets of
8 the investigation, but they were listed on their IABs. So
9 that's why sometimes there's not much detail. Sometimes
10 there's one page, sometimes there's five pages, sometimes
11 there's a hundred pages, it's really hard to tell how big
12 the file will be when I get it.

13 THE COURT: Okay. But just to be clear, it's your
14 representation that you, as far as you know, you have given
15 him all the files that --

16 MR. JOHNSON: Right. And I was never informed of
17 any deficiencies after I sent those files two weeks ago, I
18 would have corrected them to the extent I could have.

19 THE COURT: Counsel, they must have looked
20 deficient when you got them?

21 MR. HARVIS: Your Honor, so I had, on June 20th I
22 sent a letter to the Court listing out all of these files
23 that were overdue because we had conferred about them.

24 THE COURT: Yes.

25 MR. HARVIS: And I had let him know that they

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2 hadn't been produced. Not a single, with the exception of
3 one of these files, not one file has come to my office since
4 that time.

5 THE COURT: Well, I understand, but he said he
6 sent you files two weeks ago and he also said I didn't get,
7 I mean let me back up so I can understand. These numbers
8 that you have here, you got this from the City?

9 MR. HARVIS: Yes, exactly, its from the officers'
10 disciplinary summaries.

11 THE COURT: Okay, and so you asked for all the
12 files related to that, he said he sent you all the -- I
13 don't know whether he did or didn't, but he said he sent you
14 some files, how big was it, counsel?

15 MR. JOHNSON: I don't know, maybe a hundred pages,
16 I can't remember at the time.

17 MR. HARVIS: May I respond, Your Honor? Yeah, so
18 I have a list here of everything we've received. And so what
19 we got two weeks ago was a single file, it was file number
20 10-09943, and actually, looking at my list, it's not even a
21 file that appears here on my list.

22 THE COURT: Yeah, it's not on this list here.

23 MR. HARVIS: No. And so that's, so when he says
24 he's sent us all the files two weeks ago, he's referring to
25 one single file for one incident that does not appear on

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this list.

MR. JOHNSON: There were also --

MR. HARVIS: And then last night, if I may just finish.

MR. JOHNSON: Yeah.

MR. HARVIS: And then last night, yesterday afternoon, was when I received this stack of maybe 20 pages of single page documents that just say things like improper search.

MR. JOHNSON: I sent those, those papers were sent two weeks ago. I sent a different production yesterday.

THE COURT: Okay. Okay, let's got to, what about what's in 10, counsel, did you send these to the plaintiff?

MR. JOHNSON: Yeah, I sent, I made the request for the documents, I got a delivery of documents, I sent them in two shipments, one was about a hundred pages, the other one was about thirty pages. The first one was sent around June 10th, the second one was sent around two weeks ago, I never heard back from plaintiff's counsel.

THE COURT: Okay, now, and you looked at it, and it included these files?

MR. JOHNSON: To the extent I could tell, yes.

THE COURT: Well, you have a list of what you sent him?

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MR. JOHNSON: Yeah, I had the list of what we sent him. I don't have that on me, but I did send him a whole list of files.

THE COURT: And as far as your recollection is, there is nothing that is on this list that you failed to send him?

MR. JOHNSON: If there was missing files from it, I would have appreciated to hear from plaintiff's counsel.

THE COURT: Well, that's all well and good to appreciate to hear from him, but if, for example, if he asked for 11-26745, either you sent it to him or you didn't.

MR. JOHNSON: I'm pretty sure I sent that one.

THE COURT: Okay, because I mean I'm perfectly willing to say, look, if you're the person who is supposed to receive files, you say, all right, I didn't get the stuff on my list, and believe me, I have some cases in which, you know, it gets there a hot minute and they're already making a motion to compel. But it's also true that I expect a similar obligation on the part of the person sending it. That is if you got a list from the other side and it had a list of 15 things, if you didn't send him all 15, I would expect the cover letter to say here's what's in this, and he would see right way what's not in it.

There seems to be a little bit of miscommunication

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here, and but I'll leave it this way. The plaintiff raised some questions about not receiving some files, I have not seen any reason why they should not be produced, so in essence, the burden still is on the defendant to produce it.

MR. JOHNSON: Yes.

THE COURT: Now, if you say that you've sent it to him and you have some transmittal letter, and for some reason he hasn't received it, then you send it again, or you give it to him again. But, again, before you leave here today, I want to -- you don't have your letter though, do you?

MR. JOHNSON: No, I don't have it on me, I'm sorry.

THE COURT: Can you call somebody?

MR. JOHNSON: Probably not, sorry, but it's on my computer.

THE COURT: Okay. I don't expect this to linger, but you're saying that you can't find, for example, do you remember from your transmittal letter you indicated what files were in it?

MR. JOHNSON: I can't remember, Your Honor, but I can confer with counsel and we can figure out what he, and I can see what I sent.

THE COURT: But you did not withhold anything --

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MR. JOHNSON: No, I didn't withhold anything. I did not withhold anything.

THE COURT: Well, there seemed to be no objection, at least, from defense counsel, so I assume that in some manner, shape or form he'll make sure you get this before, I'll give you -- first of all, the stuff with respect to Taylor is problematic because Taylor is deposed tomorrow morning?

MR. HARVIS: Yes, Your Honor.

THE COURT: Do you know which of these refer to Taylor?

MR. HARVIS: I can figure that out very easily, Your Honor.

THE COURT: Okay. Well, you will endeavor to get anything related to Taylor by the end of the day. And the others by tomorrow at noon. And can you check your office to see if they were sent?

MR. HARVIS: Yes, Your Honor, absolutely. I mean if I could just say, I mean I've kept meticulous records of the documents we've received and I am someone who has a particular familiarity with the files and sort of the way they work. And so I can represent to the Court that as to the documents that are listed here, there is one single file that we've received and that's it. So I'm deeply concerned

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about the representations that are being made today.

MR. JOHNSON: Did you not get any CCRB files, Mr. Harvis, those were also on the list.

THE COURT: Hold it, counsel, counsel.

MR. JOHNSON: Okay, sorry.

THE COURT: We don't have conversations between lawyers.

MR. JOHNSON: Sorry.

THE COURT: Okay. If you have a point to make, I'll give you time to make it. Finish, counsel.

MR. HARVIS: I just wanted to say, Your Honor, that I am deeply concerned. You know, I don't have any problem with the fact that some things may be overdue and things may take more time, but to suggest that all of these files have been produced when we've only received a single file that I don't even think was on this list, I'm concerned about it. And so, you know, it may be the subject of a further letter to the Court once we get to the bottom of it.

THE COURT: Well, it will be a letter, it will be the subject of defense counsel explaining to me why I should not take further actions to misrepresentations to the Court.

MR. JOHNSON: Your Honor, I just want to say for the record that this conference could have been avoided with better communication between plaintiff's counsel and defense

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2 counsel. I don't think there's really any disputes, but
3 there is just, to the extent that plaintiff's counsel needs
4 some documents and defense counsel doesn't have an objection
5 to them, we tried to get all the files as soon as we can and
6 if there was something missing we would have appreciated
7 knowing that, but --

8 THE COURT: Well --

9 MR. JOHNSON: You know, I mean I just feel like,
10 you know, we had three weeks, I haven't really heard from
11 plaintiff's counsel, I've been trying to produce documents
12 to him. I produced documents to him yesterday, I produced
13 documents two weeks ago. We've been planning depositions.
14 So to the extent that, you know, plaintiff's counsel wants
15 to be here today, that's fine, but I just feel like it's
16 just --

17 THE COURT: Well, I don't deal with feelings.

18 MR. JOHNSON: Yeah, I know, sorry.

19 THE COURT: All I'm concerned with is plaintiff's
20 counsel wrote a letter to Judge McMahon, said I didn't get
21 these things from the defendant. It seems to me, at that
22 point, unless the defendant has a viable claim that the
23 information should not be produced, there is a burden on the
24 defendant as the party who is supposed to be producing it to
25 make sure that the plaintiff got the information.

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Life is a two-way street.

MR. JOHNSON: No, I understand.

THE COURT: So that, for example, you are saying I didn't hear anything from plaintiff about not getting the documents. Someone might ask, well, did you call the plaintiff and say did you get it, you see how those things work?

MR. JOHNSON: No, I understand, Your Honor.

THE COURT: You know, in relationships, communication is a two-way street.

MR. JOHNSON: I agree, Your Honor. Also, a lot of CCRB files are referred to IAB files, and so forth, so there's a lot of duplication in the numbers. The numbers don't necessarily reflect what exactly, which documents are actually outstanding because some of them were referred to CCRB. So I will cross-check to make sure that there are --

THE COURT: And let there be no mistake, my point is, is that this is a dispute that was brought to Judge McMahon, the plaintiff pointed out some things that they did not receive. You don't, you have not presented to me any reason under the rules that they should not have been produced, and, therefore, you're responsible for making sure that it happens.

MR. JOHNSON: Okay.

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THE COURT: And so you will talk with the plaintiff, you will find out if you sent him something, if he didn't get it, but as far as I'm concerned, he's pointed out a list of documents and file numbers, they appear to be relevant and, you know, it's been three weeks. I assume that if they haven't been produced they are going to be produced in short order.

So what we'll consider this is I'm ordering all of these to be produced no later than noon tomorrow. If you've already sent them, then you've already complied. Doesn't that make it simpler?

MR. JOHNSON: Yes.

THE COURT: And for plaintiff, you're okay with that?

MR. HARVIS: That's fine, Your Honor, thank you.

THE COURT: Okay, but again, you know, I don't know whether he sent it. I don't know whether or not there's something with the numbers and CCRB files and NYPD files, it may be some things, maybe they were only witnesses and there's only one page, I don't know. But the rule is, the ruling is that these are ordered to be produced, I can't be any clearer than that.

MR. HARVIS: Just to make it slightly clearer, Your Honor, you're referring to the files, correct, Your

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Honor, not the summaries?

THE COURT: I'm talking about the files.

MR. JOHNSON: Yes, the underlying files, Your Honor, that's right.

THE COURT: That's right.

MR. JOHNSON: The documents.

THE COURT: Okay, next. What's your next problem?

MR. HARVIS: We just have two more quick issues, Your Honor, I'll try to make them quick. One is the substantive responses to certain of our interrogatories. And I just summarized them in the letter, I didn't want to waste the Court's time spelling them out. But basically they seek information about the defendants regarding their prior discipline by the NYPD, when they've been disciplined. Whether or not a Court has ever ruled their testimony to be unworthy of belief or deemed them incredible. And whether or not they have ever been arrested for a crime of dishonesty or a felony, basically crimen falsi.

THE COURT: This is for the officers?

MR. HARVIS: For the defendant officers, yes, Your Honor. And so we didn't receive any substantive responses, we only received objections to those interrogatories.

THE COURT: What's the objection?

MR. JOHNSON: Oh, well, there's, we produced

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yesterday relevant documents to whether or not, to some of these questions, otherwise there's, you know, the defendants haven't been arrested, you know, they've never --

THE COURT: Well what's the objection? Is there an objection?

MR. JOHNSON: Well, the objection -- well, I mean there's no objection because if they were convicted of a crime or arrested we would disclose that.

THE COURT: Okay, so basically your representation here is that as to number X1 --

MR. JOHNSON: Which one, go through them and I will --

THE COURT: I'm sorry, number 11.

MR. JOHNSON: Which one is that one?

MR. HARVIS: Number 11 of our June 20th letter, oh, I'm sorry, it's interrogatories 5 through 9.

THE COURT: And 16 to 17.

MR. JOHNSON: Okay.

THE COURT: I mean it seemed relevant --

MR. JOHNSON: Yeah, I mean we did produce two court cases that are relevant to this matter, regarding one of the defendant officers in our disclosures yesterday.

THE COURT: Did you get it?

MR. HARVIS: So what we got yesterday as to one of

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2 the five defendants, we got two decisions from the Court.
3 There was nothing explaining, no supplement that explained
4 what they were or what proceeding they were in, and no
5 indication that there was no documents as to the other four
6 defendants, it was just simply portions of two court
7 opinions in which one defendant was deemed incredible. So we
8 believe that response is insufficient.

9 THE COURT: You mean insufficient because it
10 didn't say anything about the other four?

11 MR. HARVIS: Exactly, we just want to know if
12 there is, if the representation is that that's all that
13 there is.

14 THE COURT: There's a representation that's all
15 there is, isn't there, counsel?

16 MR. JOHNSON: Yes, that's all there is. And then
17 to the extent that we found documents relevant to that
18 interrogatory, we produced those documents. I apologize for
19 not saying which Court and one was an oral decision, one was
20 a written decision in New York Supreme Court, and as soon as
21 I found out about them I disclosed them to plaintiff's
22 counsel.

23 THE COURT: Okay, but basically nothing for the
24 other four, and as to the one, you produced the, I don't
25 know exactly what you say in your interrogatories, but you

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have the decisions --

MR. JOHNSON: Yes.

MR. HARVIS: The interrogatory at issue asked whether or not a court or tribunal has ever deemed the officer's testimony to be unworthy of belief or incredible, like at a suppression hearing, Your Honor.

THE COURT: Okay, so he sent you two decisions.

MR. HARVIS: That's right.

MR. JOHNSON: What more do you want?

MR. HARVIS: Well the actual written response to the interrogatory was just an objection, there was no substantive response. So I understand he's now telling me that basically there is nothing for anyone else and this is all there is for that one defendant.

THE COURT: Right.

MR. HARVIS: I just want an answer under Rule 33 so that later on in the proceeding I have that committed to writing and it's not just here at the conference.

THE COURT: Okay, you two can work out the supplementals. I mean he's made the representation here, I assume there is no problem in making sure that there's a supplemental response to the interrogatories.

MR. JOHNSON: Yeah.

THE COURT: Making it clear that there are no

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2 further responses.

3 MR. HARVIS: Thank you, Your Honor. And then there
4 are just two other issues. One is that --

5 THE COURT: You said two the last time.

6 MR. HARVIS: Well, I know, but this kind of
7 brought up another one, so I'm counting it. But if Your
8 Honor wants to cut me off you're welcome to obviously. So
9 and this is, we only got these documents yesterday, so
10 that's why I'm sorry I'm raising it, it's a little bit,
11 maybe we should -- withdrawn. We'll discuss this and if
12 there's an issue I'll raise it with the Court because it's
13 first impression right now.

14 There was one document request which goes back to
15 the issue of the privilege log that we did not receive a
16 response to, and that's our request for emails and text
17 messages between the officers for any responsive emails and
18 text messages. The only reason it's not in our letter, Your
19 Honor, is because the defendants actually did not respond.
20 What they did was we ask it in our document request number 6
21 whether or not there were any relevant emails, and in
22 response to document request number 6, the defendants
23 reprinted a different document request. So I wasn't aware
24 of that mistake until I was reviewing them just now. But
25 instead of reprinting our request for emails and texts, they

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list the request as all vouchers concerning any items in plaintiff's possession, which doesn't appear in our demands.

THE COURT: Well, again, this falls into category of we're not sure because there's a mistake. Were there any responsive emails?

MR. JOHNSON: Upon information and belief at this time, we don't believe there are any emails or photographs or text messages made. If there were, I would have disclosed them. I mean --

THE COURT: What do -- plaintiff?

MR. HARVIS: So here's my concern, Your Honor, so it seems like they weren't even aware that this request was being made. So now I'm going to go to the deposition --

THE COURT: I don't know, did you know that --

MR. JOHNSON: No, I was aware of this request, I obviously made a mistake in the discovery responses. It's a standard question to ask the defendant officers if they had any emails, or text messages, or photographs that they took at the scene and if those --

THE COURT: Again, you can work this out, you'll do a response that indicates that there are no responsive emails.

MR. HARVIS: My concern, Your Honor, is just that tomorrow at Detective Taylor's deposition I'm sure the

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question will be were you instructed to search through your emails and look for responsive documents, and I just have an expectation that the answer to that question is going to be no.

MR. JOHNSON: I think the question you can ask easily is do you have any emails.

THE COURT: If the answer is no, then you can come back and --

MR. HARVIS: That seems reasonable.

THE COURT: We'll fix that.

MR. JOHNSON: I mean to the extent that, I will represent I have talked to Detective Taylor, asked if he has any emails or text messages, I can add, or anything regarding the case --

THE COURT: Well, see, my standard way of dealing with these kind of situations is if he asks a fair question about whether or not he searched for emails and there's been a representation that there are no emails, then we'll fix the email thing and then he'll come back and he'll be deposed.

MR. JOHNSON: I don't understand, sorry, Your Honor, what did you say?

THE COURT: Well, if, for example, he asks were you asked to search for any emails and he says, no, nobody

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ever said that to me, then you're going to ask, he'll be asked to search for emails. If he finds any emails, he'll come back and he'll testify about the emails.

MR. JOHNSON: That's fine.

MR. HARVIS: That's it for me, Your Honor, that's everything.

THE COURT: You got any problems?

MR. JOHNSON: No, Your Honor.

THE COURT: Obviously, we all have problems.

MR. JOHNSON: Yes.

THE COURT: But any problems with the discovery issues.

MR. JOHNSON: Um-hmm.

THE COURT: So you're going to meet Judge McMahon's deadline?

MR. JOHNSON: I will write the Court if there's a problem.

THE COURT: She doesn't look favorably upon --

MR. JOHNSON: No, I understand, Your Honor. It's just that I don't know what the size of the files are, so to the extent that I have documents, that's what I have. I don't know if there's one page or twenty pages. So, for example, in a Civilian Complaint Review Board file I know exactly how many pages there are generally, and for their

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2 report. For IAB or the, any precinct level investigation,
3 usually it's minimal paperwork at best.

4 THE COURT: Well, you know, to some extent I feel
5 your pain, although you've had ample time --

6 MR. JOHNSON: No, I understand, Your Honor, I know
7 what you're saying.

8 THE COURT: You've had ample time to inquire about
9 this.

10 MR. JOHNSON: No, I did inquire and I will see
11 what is --

12 THE COURT: You know, if three weeks, four weeks
13 down the road you find out that it's a thousand pages and
14 you thought it was a hundred, that's on you, you should have
15 found that out a while ago.

16 MR. JOHNSON: No, Your Honor.

17 THE COURT: So, you know, you may have to use a
18 little more, if it turns out that it's more than you
19 anticipated, then I'm sure there are enough hours in the day
20 to fix that.

21 MR. JOHNSON: Yes, Your Honor.

22 THE COURT: If there's nothing further, I
23 appreciate that, I think the referral was for discovery
24 disputes, that means any reasonable follow-up on the things
25 that we've talked about, you bring those to me, not to Judge

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2 McMahon, and you bring them to me immediately. You still
3 need to talk before you leave though because I want to make
4 sure that, you know, you have access to a judicial officer,
5 give you an incentive to have a fruitful conversation. But
6 we'll be adjourned officially.

7 MR. HARVIS: Your Honor, just one more thing, I'm
8 sorry, before we go, I'm just thinking practically. Mr.
9 Harris is incarcerated here at the Manhattan Detention
10 Center, so if I'm going to make it to bring him this
11 photograph before the deposition tomorrow, I just want to
12 make sure that I have enough time to actually do that. Is
13 there anyway we could set a deadline like of, say, 2:30 this
14 afternoon for me to get the photograph, so that I can --

15 THE COURT: Well I thought it was in his office.

16 MR. JOHNSON: I think I have it in my office, so I
17 can --

18 THE COURT: You can follow him to his office and
19 get it.

20 MR. HARVIS: But we have a deposition on another
21 case actually --

22 MR. JOHNSON: Or I could just email it to him. I
23 have a deposition at noon with him.

24 THE COURT: You can figure out how to, I mean it
25 was my intention that it be done as soon as he got back to

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his office.

MR. JOHNSON: I think I have Detective Taylor, the other officers, I have to get the other officers pictures.

THE COURT: Okay, but I mean basically you're saying that if you don't have it by 2:30 it's going to create a problem, but what time is it now, it's only 11:25, that's 3 hours.

MR. HARVIS: We have a deposition together at noon on another case, Mr. Johnson and I, so I'm just trying to fit everything in, but --

THE COURT: Okay, you all figure out how to do it.

MR. HARVIS: I'll make it work.

THE COURT: You better talk quick right now though. Okay, we're adjourned, thank you.

MR. HARVIS: Thank you, Your Honor.

MR. JOHNSON: Thank you.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Harris versus City of New York, et al., Docket #15cv8456, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: August 18, 2017